

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRED SMITH,

Plaintiff,

No. CIV S-03-1939 DFL JFM P

vs.

WARDEN D.L. RUNNELS, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On June 6, 2005, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Plaintiff has filed objections to the findings and recommendations.¹

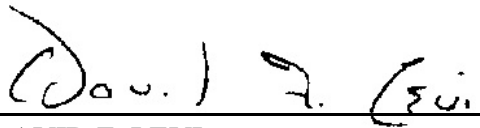
¹ Plaintiff's objections were not served on defendants. Plaintiff is advised that every document submitted to the court for consideration must be served on defendants. Fed. R. Civ. P. 5. Plaintiff is required to serve all documents in this action conventionally in accordance with the relevant provisions of Fed. R. Civ. P. 5. See Local Rule 5-135(b). Since an attorney has filed a document with the court on behalf of defendants, documents submitted by plaintiff must be served on that attorney and not on the defendant. Fed. R. Civ. P. 5(b)(1). Conventional service

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-
2 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire
3 file, the court adopts the findings and recommendations with a slight modification. The findings
4 and recommendations state that the prison officials had 100 working days to respond to
5 petitioner's grievance. According to Cal. Code Regs. Tit. 15, § 3084.6, the prison officials had
6 120 working days to respond. Because plaintiff filed this suit 91 calendar days after sustaining
7 his injury, he did not properly exhaust administrative remedies.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The findings and recommendations filed June 6, 2005, are adopted in full as
10 modified above;
- 11 2. Defendants' September 13, 2004 motion to dismiss is granted; and
- 12 3. This action is dismissed without prejudice for failure to exhaust administrative
13 remedies prior to suit.

14 DATED: 9/14/2005

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17 _____
18 DAVID F. LEVI
19 United States District Judge
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24 _____
25 is usually accomplished by mailing a copy of the document to the attorney's address of record.
26 See Fed. R. Civ. P. 5(b)(2)(B). Plaintiff must include with every document filed in this action a
certificate stating the date an accurate copy of the document was mailed to defendants' attorney
and the address to which it was mailed. See Local Rule 5-135(b) and (c).